

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOSEPH A. COCHRAN, JR.,	:	
Plaintiff,	:	C.A. No. 1:06 cv 00697
	:	
v.	:	
	:	
J.B. HUNT TRANSPORT, INC.	:	
and JAMES W. REED,	:	
Defendants.	:	

**DEFENDANTS', J.B. HUNT TRANSPORT, INC. AND JAMES W. REED, RESPONSE
IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY
RESPONSES**

Defendants, J.B. Hunt Transport, Inc. and James W. Reed, through their attorneys, Rawle & Henderson, LLP, hereby oppose Plaintiff's Motion to Compel Discovery Responses, as follows:

1. Admitted in part, denied in part. It is admitted only that plaintiff seeks production of all recorded statements taken in this matter. The remaining averments contained in paragraph 1 of the Motion to Compel are denied as conclusions of law to which no response is required under the Rules of Civil Procedure. To the extent that an answer is required, it is significant to note that the recorded statements requested by plaintiff were not obtained by an insurance adjuster. Defendant, J.B. Hunt Transport, Inc., is self-insured. As a result of the accident, defendant, J.B. Hunt, hired an investigator. Therefore, any investigation performed by the defendant or on the defendant's behalf was performed in anticipation of litigation and is protected under the work product doctrine. F.R.C.P. 26(b)(3). Among the items included in the parameters of F.R.C.P. 26(b)(3) are the statements obtained of the defendant and witnesses. Any statement taken of the defendant or witnesses by an agent of the defendant is not admissible under the rules of discovery. Moreover, the Federal Rules of Civil Procedure provide that any

statement made by a party in anticipation of litigation is not discoverable without good cause shown. F.R.C.P. 26(b)(3). Plaintiff has failed to make a showing of "good cause." The exception to the "good cause" rule is a statement by plaintiff. In the present matter the plaintiff's statement was produced. Plaintiff has failed to make a showing of "good cause" as to why he is entitled to the defendants' work product. Plaintiff has the names and address of all witnesses and is easily able to obtain statements of eye witnesses. In fact, one witness is the wife of plaintiff and plaintiff was present when the statement was obtained. Further, potential witnesses were identified by the defendants in their Self Executing Disclosures as well as in the interrogatory answers. Plaintiff has had ample time to contact these witnesses.

2. Denied as a conclusion of law to which no response is required under the Rules of Civil Procedure. To the extent that an answer is required, it is significant that plaintiff relies on non-binding case law. Specifically, in support of its demands for the recorded statements and its Motion to Compel, plaintiff cites an opinion of the Delaware Superior Court, Charles v. Liser, 2003 Del. Super. LEXIS 251 (Del. Super. Ct. July 10, 2003), case law which interprets the Delaware Superior Rules of Civil Procedure and does not address F.R.C.P. 26. The Third Circuit has upheld the protection of work product of tangible documents and things prepared in anticipation of litigation. United Coal Companies v. Powell Const. Co., 839 F.2d 958,966 (3rd Cir. 1988).

WHEREFORE, Defendants respectfully request that this Honorable Court enter the attached Order denying Plaintiff's Motion to Compel.

RAWLE & HENDERSON LLP

By: /s/ Delia A. Clark
Delia A. Clark
Attorneys for Defendants,
J.B. Hunt Transport, Inc. and
James W. Reed

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the within-captioned DEFENDANTS' J.B. HUNT TRANSPORT, INC. AND JAMES W. REED, RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES was served via first-class mail, postage prepaid, on the below listed individuals on this 24th day of October 2007:

Timothy E. Lengkeek
YOUNG, CONAWAY, STARGATT & TAYLOR
1000 West Street, 17th Floor
PO Box 391
Wilmington, DE 19899-0391

RAWLE & HENDERSON LLP

By: /s/ Delia A. Clark
Delia A. Clark
Attorneys for Defendants,
J.B. Hunt Transport, Inc.
and James Reed

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ORDER

At Wilmington, this _____ day of _____, 2007, upon
consideration of Plaintiff's Motion to Compel and Defendants' Response in Opposition to same,
it is hereby ORDERED that Plaintiff's Motion is DENIED.

UNITED STATES DISTRICT JUDGE